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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 17

Application Number: 09/201,107

Filing Date: 11/30/98

Appellant(s): Christian Mayaud

Daniel H. Sherr
For Appellant

EXAMINER'S ANSWER

MAILED
AUG 28 2001
Technology Center 2100

This is in response to appellant's brief on appeal filed on 6/11/01.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

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(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because the dependent claims are argued with the independent claims and do not contain separate reasons why the claims stand separately from the independent claims. The appellant's arguments are constructively group the claims to stand or fall together with the independent claims.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

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5,542,420

GOLDMAN et al.

8-1996

5,867,821

BALLANTYNE et al

2-1999

Gostin et al. "Privacy and Security of Personal Information in a New Health Care System" The Journal of the American Medical Association, vol. 270, no. 20 (Nov 24, 1993), pp. 2487(7) (Identified as Faden et al. in the final rejection and appeal brief and below)

Fox, Gary N. "Rxwriter" Journal of Family Practice, vol. 37, no. 3, p.296(2)

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 79-83 are rejected under 35 U.S.C. 102(e). This rejection is set forth in prior Office action, Paper No. 13 and reproduced below.

Claim 84 is rejected under 35 U.S.C. 102(a). This rejection is set forth in prior Office action, Paper No. 13 and reproduced below.

Claim 84 is rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office action, Paper No. 13 and reproduced below.

Claims 70, 76-77 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office action, Paper No. 13 and reproduced below.

Claims 79-83 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by

Goldman et al., patent number 5,542,420.

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Goldman et al. teaches the patient history record display system as shown in col. 2, lines 5-20, col. 2, line 65 - col. 5. line 25, col. 6, line 9 - col. 7, line 4, col. 8, line 61 - col. 9, line 45, col. 10, line 51 - col. 11, line 15).

Claim 84 is rejected under 35 U.S.C. 102(a) as being clearly anticipated by Faden et al., "Privacy and Security of Personal Information in a New Health Care System" JAMA 11/93.

Faden et al. teaches the access control software (see at least page 8).

Claim 84 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al., patent number 5,867,821 in view of Faden et al., "Privacy and Security of Personal Information in a New Health Care System" JAMA 11/93.

Ballantyne et al. teaches the access control software (figs. 9a-9c, col. 7, line 66 - col. 8, line 65). Faden et al teaches providing authorized access at authorized times (see at least page 8). It would have been obvious to one having ordinary skill in the art at the time of the invention to have implemented a condition of authorized access at authorized times as in Faden et al. since the time limitation would have provided further protection of records in computer systems as taught by Faden in the computer system of Ballantyne et al.

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Claims 70, 76-77, are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox, "RxWriter", Journal of Family Practice, v.37, n.3, p. 296(2), 9/1993.

Fox describes RxWriter which includes patient identifying data, drug identification data, and drug quantification data. Fox also describes a library of drugs, drug formulary information (generic drugs) which are displayed prior to completion of the prescription, however, these are stated as not included in RxWriter. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to have implemented the library and drug formulary information since this information would have improved the efficiency and thoroughness of the system as directly suggested by Fox.

(11)Response to Argument

The Appellant argues that Goldman does not teach a system being operative to display an electronically generated prescription history of a patient's prior prescribed treatments at multiple record-independent facilities. Claim 79 is directed to a display system operative to display an electronically generated prescription history of a patient's prior prescribed treatments at multiple record-independent facilities. Goldman repeatedly describes generating a display of a patient's prescription history including treatments at multiple record-independent facilities. Specifically, Goldman teaches the records of treatments are collected from doctors, hospitals, medical laboratories, and pharmacies (col. 3, lines 30-35, col. 6, lines 10-15, col. 1, lines 25-32) where information is communicated to the system from the independent doctor,

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hospital, or pharmacy facility (col. 4, lines 55-60, col. 6, lines 30-35, col. 11, lines 10-12).

The claim is directed to any display system and does not include apparatus to assemble the information in any specific manner. The claim covers any type of display system that displays the prescription history of a patient's prior prescribed treatments at multiple record-

~~independent facilities. The central database of Goldman does not teach away from such a~~
display system since the information is communicated to the central station from multiple record-independent facilities as shown above. Further, a host facility, wherein the history record is retrieved in the form of a complementary record elements from multiple remote databases by the host computer facility is claimed in claim 83 which is also shown in Goldman and as the appellant argues.

The appellant argues that the dependent claims are allowable for the same reasons of the independent claim which constructively groups the claims as standing or falling together. However, as in claim 80, Goldman teaches a patient condition list for selection of conditions for posting to the prescription with conditions listed in the patient history record (col. 6, lines 15-20 "health and conditions of the individual including such parameters as blood pressure, blood picture (hematocrit, hemoglobin content, iron content, etc.), urine chemistry and so on", col. 11, lines 20-45).

Further, as in claim 81, Goldman teaches a source oriented data retrieval subsystem, the data retrieval subsystem being connected to access at least one data retrieval network to

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retrieve source prescribing information and patient related data to the point of care from at least one remote source database (col. 8, line 65-col. 9, line 2, col. 4, lines 55-60).

As in claims 82 and 83, Goldman teaches a patient history record is a contemporaneous record dynamically assembled from multiple source record elements retrieved from multiple heterogenous remote databases pharmacies (col. 3, lines 30-45, col. 6; lines 10-15, col. 1, lines 25-32, col. 4, lines 55-60, col. 6, lines 30-35, col. 11, lines 10-12, col. 8, line 65-col. 9, line 2). The host computer facility wherein the patient history record is retrieved in the form of complementary record elements from multiple remote databases by the host computer facility is shown in at least col. 6, lines 9-35, col. 7, lines 35-67.

The appellant also argues that Faden et al. (Gostin et al., "Privacy and Security of Personal Information in a New Health Care System, JAMA, v.270, n.20 11/93) does not teach access control is maintained by reference to record access specifications provided in a security profile in a pre-authorization file. Faden et al. clearly discloses the patient data access control system for screening users attempting to access a patient history at least on p.7-8 of the copy. Specifically, Faden teaches privacy and security of personal information in an automated patient record system with the pre-authorization file (being used to control access to the patient's data) (see at least page 8 (or section labeled as "Security of Health Information Systems" starting on page 7) which teaches "[w]ith computerized systems, tailored selection of data items from an individual health records is easy, thereby making it possible to share only

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the information that is necessary to the inquiry at hand. With the establishment of appropriate access requirements, more accurate, reliable, and cost-efficient protection of health care information can be achieved that with nonautomated system" ... "The steps identified by the National Research Council as necessary for achieving greater computer security and trustworthiness include quality control, access control on program code as well as data, user identification and authentication,..."). The article also teaches the record access specifications (determining which parties can access what data during what period of time) provided in a security profile in a pre-authorization file (see at least page 8, referenced above in addition to "[t]hese protections will be most effective if privacy is addressed directly at the outset in developing electronic systems. They should guarantee that only authorized persons are able to access records for authorized purposes at authorized times" where the profile in a pre-authorization file is inherent since the profile is necessary in the determination of authorized users and level of access permitted). These files and programs are necessary for ensuring the security of the system.

The appellant argues that Ballantyne et al. does not teach a pre-authorization file since Ballantyne et al. teaches a central user list. In support of this argument, the appellant states that the central user list is merely a list of legitimate users, wherein any of the legitimate users can access any record on the system. This is clearly not the case. Ballantyne et al. clearly teaches that not all users can access any record. Specifically, the example of a general practitioner cannot access psychiatric data (col. 8, lines 5-10). Also, authorized users do have

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a security profile in a pre-authorization file (col. 8, lines 20-55). Faden et al. was used to show the additional access level of accessing during a period of time (p.8). The combination of references is proper for the reasons stated in the rejection.

The appellant also argues that Fox does not teach drug formulary information identifying a benefit plan recommended drug. Fox clearly suggests that the use of a distinction or cross-referencing between generic (preferred in benefit plans) and brand names would provide improved efficiency. Thus one of ordinary skill in the art would have been motivated to include the distinction between drugs.

Likewise, the appellant argues that Fox does not teach a drug contraindication review routine...accessing contraindication information regarding the prescribed drug and an alert regarding a relevant such contraindication of claim 76. Fox clearly teaches that “[l]ast, the ultimate missing efficiency is the ability to combine drug-interaction checking with prescription writing” suggesting a better prescription creation software would exist by incorporating such checking (where accessing contraindication information is inherent since this would have been necessary for checking for drug-interactions and where the alert would have been inherent since this the result of the checking must be displayed for warning of the interactions). Fox also teaches that SOAP does take advantage of the electronic environment by including automatic interactions flagging suggesting to one having ordinary skill in the art that such automatic flagging is preferred in a prescription writing system.

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Claim 77 is constructively grouped with claim 76 since the claim is not separately argued.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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August 27, 2001

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